

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

REBECCA FRANCESCATI, an individual,

Plaintiff,

v.

STEFANI JOANNE GERMANOTTA, an
individual, a.k.a. "Lady Gaga," INTERSCOPE
RECORDS, UNIVERSAL MUSIC GROUP,
INC., DJ WHITE SHADOW, LLC, and
BRIAN JOSEPH GAYNOR, an individual,

Defendants.

Case No. 1:11-cv-5270

JURY TRIAL DEMANDED

Judge Marvin E. Aspen
Mag. Judge Jeffrey T. Gilbert

**PLAINTIFF'S RESPONSE TO DEFENDANTS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

On July 22, 2013, Defendants collectively filed with the Court a Notice of Supplemental Authority (Docket No. 175) along with an exhibit containing the decision of the Seventh Circuit Court of Appeals in *Hobbs v. Elton John*, 2013 U.S. App. LEXIS 14401 (7th Cir. July 17, 2013) (Dkt. 175-1). That decision, according to Defendants, supports their position regarding substantial similarity between the works at issue in the instant litigation. Defendants' argument is flawed because *Hobbs* is factually distinguishable from the case at bar and, actually, supports one of Plaintiff's theories of infringement.

The *Hobbs* court was faced with a comparison of lyrics only. Here, the Court is faced with several substantially similar, creative and unique musical attributes of Plaintiff's song *Juda* which are present in the Defendants' song *Judas*. *A fortiori*, Defendants do not mention that portion of the *Hobbs* opinion in which the Court states "Although we need not address whether the district court correctly interpreted *Peters* on this [unique combination theory] issue, we observe that there is a wealth of authority recognizing that, in certain situations, a unique

arrangement of individually unprotectable elements can form an original expression entitled to copyright protection.” 2013 U.S. App. LEXIS 14401, at *8 n. 4; (Dkt. 175-1 at pp. 5-6). Further, “[i]ndeed, in *Peters*, our conclusion that the similarities between the two songs were not individually protectable did not keep us from considering whether the plaintiff could establish a copyright infringement claim based on ‘all of these [unprotectable] elements in combination.’” *Id.*

Accordingly, *Hobbs* supports Plaintiff in the matters presently pending in the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 24, 2013 the foregoing

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was filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following counsel of record.

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